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4 ROBBIE POWELSON,
5 Plaintiff,
6 v.
7 SAUSALITO POLICE DEPARTMENT, et
8 al.,
9 Defendants.

10 Case No. 23-cv-01360-EMC (SK)
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12

**ORDER DENYING ISSUANCE OF
SUBPOENA**

Regarding Docket No. 89

13 Plaintiff seeks to issue a subpoena to the Marin County District Attorney's Office for
14 information regarding Defendant Officer Nick White's alleged inclusion on a "*Brady* list"
15 identifying him as having credibility issues. Plaintiff claims that White's inclusion on the list
16 stems from White allegedly committing perjury in a criminal trial against his ex-girlfriend.
17 Plaintiff argues that this information is relevant to White's credibility as a witness in this action.

18 **A. Background**

19 Plaintiff obtained a letter, dated July 12, 2016, addressed to White, from the Marin County
20 District Attorney's Office. That letter states in pertinent part:

21 Our office is required by law to disclose to a defendant and/or his/her attorney of
22 record any information we have in our possession concerning a witness who is on
23 probation and/or which may possibly fall within the scope of Brady v. Maryland
24 (1963) 373 U.S. 82¹, and/or People v. Coyer (1983) 142 Cal.App.3d 939², and the
provisions of [California] Penal Code Section 1054.

25 As we have previously discussed, the Marin County District Attorney's Office's
26 Brady Committee has met and made a determination that Mill Valley Police
Department report numbers 13-860 and 16-93 contain information that must be

27 28¹ This citation is incorrect. The correct citation is 373 U.S. 83.
² This citation is also incorrect. The correct citation is 142 Cal.App.3d 839.

1 provided in future cases in which you are a witness. . . .
2 (Dkt. No. 89 (Ex. A.).)

3 California Penal Code section 1054 provides:

- 4 This chapter shall be interpreted to give effect to all of the following purposes:
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6 (a) To promote the ascertainment of truth in trials by requiring timely pretrial
7 discovery.
8 (b) To save court time by requiring that discovery be conducted informally between
9 and among the parties before judicial enforcement is requested.
10 (c) To save court time in trial and avoid the necessity for frequent interruptions and
11 postponements.
12 (d) To protect victims and witnesses from danger, harassment, and undue delay of
13 the proceedings.
14 (e) To provide that no discovery shall occur in criminal cases except as provided by
15 this chapter, other express statutory provisions, or as mandated by the Constitution
16 of the United States.

17 Cal. Pen. Code § 1054.

18 Plaintiff also attaches an article, originally published on March 28, 2017, about a trial in
19 which White accused his ex-girlfriend of misdemeanor corporal injury on a dating partner in
20 January 2016. (Dkt. No. 89 (Ex. B.).) The article states that the jury acquitted the defendant and
21 that at least one juror found that White was not credible. (*Id.*)

22 **B. Analysis**

23 Defendants argue that Plaintiff's request is overbroad and disproportionate to the needs of
24 the case because the request seeks all documents related to *Brady* determinations without
25 "temporal or subject-matter limits." Defendants also argue that California law protects these
26 documents and that federal courts apply a balancing test to requests for information concerning
27 police disciplinary records. *See, e.g., Kelly v. City of San Jose*, 114 F.R.D. 653, 663-68 (N.D. Cal.
28 1987).

29 Plaintiff seems to believe that he can use information about White's alleged lies during
30 trial arising out of a domestic violence incident in 2016 to show that White lacks credibility in this
31 case. However, Plaintiff cannot use information at trial from a previous unrelated disciplinary
32 action involving White, if one exists, to show that White is lying on the stand in this case.
33 Impeachment of a witness can occur only in certain ways, and using a disciplinary action

1 involving an allegation of lies is not one of those ways. Federal Rule of Evidence 404(b) provides
2 that evidence “of any other crime, wrong, or act is not admissible to prove a person’s character in
3 order to show that on a particular occasion the person acted in accordance with the character.”
4 Fed. R. Evid. 404(b). There is an exception to prove “motive, opportunity, intent, preparation,
5 plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2).
6 Here, Plaintiff fails to satisfy any exception.

7 Courts have held that evidence of a defendant’s wrongdoing unrelated to the case at hand
8 is not subject to discovery. *See, e.g., Brownlee v. Burnes*, 2024 WL 4957495, at *2-3 (E.D. Cal.
9 Dec. 3, 2024) (finding requested records irrelevant, overbroad, overly burdensome, and not
10 proportional to the needs of this case where plaintiff did not limit the request based on time frame,
11 nature of the grievance allegations, or the outcome of the grievance); *see also Mueller v. Walker*,
12 124 F.R.D. 654, 658 (D. Or. 1989) (denying discovery in excessive force case “as to violations of
13 regulations or procedures unrelated to incidents of violence or complaints of police brutality”).
14 Here, Plaintiff alleges that White lied on the stand in a case involving an alleged domestic
15 violence incident with his ex-girlfriend. In this suit, Plaintiff alleges claims under 42 U.S.C. §
16 1983 against White based on actions taken on November 22, 2021 for unlawful seizure, false
17 arrest, violation of due process, and First Amendment retaliation arising out of White’s and other
18 officers’ actions in removing Plaintiff’s belongings from an encampment.³ (Dkt. No. 40.) These
19 incidents are completely unrelated.

20 The scope of disclosure under *Brady* and *Coyer* is very different from the scope of
21 discovery in civil cases. *Brady* stands for the proposition that the due process clause of the United
22 States Constitution requires the prosecution to disclose exculpatory material to a criminal
23 defendant. 373 U.S. at 86. *Coyer* stands for the proposition that “a defendant is entitled to
24 discovery of criminal charges currently pending against prosecution witnesses anywhere in the
25 state.” 142 Cal.App.3d at 842. These cases relate to the rights of criminal defendants. They do
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28 ³ It is not entirely clear which claims against White survived the order granting in part and
denying in part Defendants’ motion to dismiss, but for purposes of this discussion, the exact scope
is not important.

1 not bear on the situation at bar—a civil plaintiff's request for discovery.

2 For these reasons, the Court DENIES Plaintiff's request.

3 **IT IS SO ORDERED.**

4 Dated: August 6, 2025



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6 SALLIE KIM
7 United States Magistrate Judge
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